

**TESTIMONY BEFORE THE  
JUDICIAL PROCESS COMMITTEE  
REGARDING OPEN RECORDSTUDY  
AND THE RELEASE OF CONFIDENTIAL RECORDS**

**July 27, 2004**

Chairman Boucher and members of the committee, my name is Krista Andrews. I am an attorney with the Legal Advisory Unit of the Department of Human Services. I appear before you today to provide information as you requested regarding the protocol of the Department for the release of confidential information.

There are state and federal laws and regulations that prohibit the Department from releasing records unless certain conditions are met. For example, a state law makes confidential all Department records regarding clients or applicants. N.D.C.C. § 50-06-15 provides that it is a class A misdemeanor for any person to disclose, authorize, or knowingly permit, participate in, or acquiesce in the disclosure of any records or information concerning persons applying for or receiving assistance or services under any program administered by or under the supervision and direction of the Department of Human Services. Federal law and regulations further restrict the disclosure of substance abuse treatment records. (See 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2.)

Although client records of the Department are confidential, they may be released in certain circumstances. All records may be released if the client or applicant or legal representative signs the appropriate paperwork authorizing the department to do so. Some records may be released without a specific authorization from the client or applicant, for example, when the records are being used in the administration of a program or in the context of a civil commitment of a sexually

dangerous individual. Other records may only be released pursuant to a court order if the client does not authorize the release. Some licensing entities (such as the Board of Social Work Examiners) have the authority to subpoena confidential records and such subpoenas constitute authorization to release information. N.D.C.C. § 43-41-10(6).

There are numerous laws and regulations that govern the different programs administered by the Department and the level of confidentiality of records varies from one program to the next. The Department has a 90-page confidentiality manual that details the protocol for releasing client records. I did not go into detail since the Department administers many programs and, as noted, the confidentiality requirements of each can vary. If the committee members have questions about the confidentiality requirements of specific programs or about the Department's protocol for release of records, I would be happy to try to answer them. Thank you.

Prepared by:

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